

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(San Francisco, California)

GENTLE DENTAL MANAGEMENT, INC. 1/

Employer

and

AMPARO (GAUDY) ARAGON, An Individual

Petitioner

WAREHOUSE UNION LOCAL 6, ILWU 2/

Union

20-RD-2407**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 3/
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 4/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 5/

All full-time and regular part-time employees employed by the Employer at its 235 W. MacArthur Blvd, Suite 700, Oakland CA and 2364 Geary Blvd, San Francisco, CA locations in the following classifications: receptionists, receptionist II, appointment secty., accounting clerk, file clerk, sterilization, dental assistant, accounting clerk II, RDA, ins. specialist, treatment coord., x-ray technician; excluding doctors, dental hygienists, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained

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their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by WAREHOUSE UNION LOCAL 7, ILWU.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB. Wyman-Gordan Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before December 9, 2004. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by December 16, 2004.

Dated December 2, 2004

at San Francisco, California

/s/ Robert H. Miller
Regional Director, Region 20

- 1/ The Employer's name appears as described in its collective-bargaining agreement with the Union.
- 2/ The Union's name appears as described in its collective-bargaining agreement with the Employer.
- 3/ No representative of the Union appeared at the hearing. The record reflects that the Union was served with the petition and notice of the hearing by first-class mail on October 29, 2004. Thereafter, on November 4, 2004, the parties were served by first-class mail with notice that the hearing was rescheduled from November 5 to November 10, 2004. Subsequently, by letter dated November 9, 2004, a representative of the Union advised the Regional Office that the Union did not wish to participate in the hearing scheduled in this matter. In these circumstances, I find that the decision of the hearing officer to proceed with the hearing in the absence of a representative of the Union did not constitute prejudicial error.
- 4/ The record reflects that the Employer, a California corporation, is engaged in the business of providing dental services. During the calendar year ending December 31, 2004, the Employer derived gross revenues in excess of \$250,000 and purchased supplies valued in excess of \$2,500 which originated from points located outside the state of California. In view of the foregoing, I find that the Employer is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction herein.
- 5/ The Board has long held that the appropriate unit in a decertification election must be coextensive with the certified or recognized unit. *Campbell's Soup Co.*, 111 NLRB 234 (1955). Accordingly, the unit appears as described in the most recent collective-bargaining agreement between the Employer and the Union.